

090002686

Instrument prepared by:

VIRGINIA GAS AND OIL BOARD

Order recorded under:

CODE OF VIRGINIA
§ 45.1-361.26

VIRGINIA:

BEFORE THE GAS AND OIL BOARD

APPLICANTS:

CNX Gas Company LLC on behalf of Reserve Coal Properties and Ruth Culbertson, Metcalf Estate, and Clyborne, Inc. (To disburse and close the account)

DOCKET NO.

00-0321-0775-02

RELIEF SOUGHT:

Issuance: A Supplemental Order for Disbursement of Escrowed Funds
Action: Amending Prior Orders Affecting Drilling N-39,
Tract 3
(Referenced herein as "the Subject Drilling Unit")

Location: Buchanan County, Virginia

Action Details:

- (1) To provide a calculation of funds, Unit Operator has deposited into the Escrow Account for Drilling Unit N-39 by Tract Subaccounts;
- (2) To provide each applicant, in simple terms, a complete month over month Royalty Accounting of unit production, costs, taxes and proceeds, depicting variables used in the calculation of royalty payments to the unit escrow account.
- (3) To disburse unit funds to the Applicants, in accordance with their Unit Ownership Interests relative to those funds deposited by the Unit Operator into Subject Drilling Unit's Escrow Subaccount for **VGOB Tract(s) identified in Table 1.**

REPORT OF THE BOARD

FINDINGS AND ORDER

1. **Hearing Date and Place:** This matter came on for final hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on September 20, 2005 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA and August 18, 2009 at the Russell County Government Center in Lebanon, VA.
2. **Appearances:** , Mark A. Swartz, Esq. SWARTS Law Offices PLLC appeared for the Unit Operator; and Sharon M.B. Pigeon, Assistant Attorney General, was present to advise the Board.
3. **Jurisdiction and Notice:** Pursuant to Va. Code §§ 45.1-361.1 *et seq.*, and in particular Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board finds that it has jurisdiction over the establishment and maintenance of an escrow account, with tract sub accounts, for each of the coalbed methane gas drilling units established by the Board through its field rules that are subject to a Board pooling order. Further, the Unit Operator is required to deposit, as applicable, those funds specified in Va. Code § 45.1-361.21.D., 45.1-361.22.A.2, 45.1-361.22.A.3 and 45.1-361.22.A.4 into the applicable escrow tract sub accounts. The Board finds that: (1) while it **does not** have jurisdiction to resolve conflicting claims to the ownership of the Coalbed Methane Gas produced by the Unit Operator from wells located on Subject Drilling Unit, and (2) while it **does not** have jurisdiction to interpret agreements by and between the Gas owners/claimants and/or the Unit Operators or to abridge or contravene the provisions of such agreements, (3) pursuant to Va. Code § 45.1-361.22.A.5, **the Board does have jurisdiction and authority to disburse funds from the Escrow Account** provided the Board has been provided with a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between the conflicting claimants or an agreement among all claimants owning conflicting estates in the tracts in question or any undivided interest therein.

4. **Prior Proceedings:**

- 4.1. On March 21, 2000 the Board executed its order pooling interests in the Subject Drilling Unit for the production of occluded natural gas produced from coalbeds and rock strata associated therewith (herein "Gas") in accordance with the provisions of Va. Code SS 45.1-361.21 and 45.1-361.22 (herein "Pooling Order"). The Pooling Order was filed with the Clerk of the Circuit Court of Buchanan County on May 3, 2000, Deed Book 506 Page 597 to 611 Instrument Number 0001318. The Board executed its Supplemental Order Regarding Elections that was filed with the Clerk of the Circuit Court of Buchanan County on August 24, 2000, Deed Book 511, Page 767 to 775 Instrument Number 000002336.
 - 4.1.2 On September 20, 2005 the Board approved the Issuance of an Amended Supplemental Order, Amending Prior Orders Affecting Drilling Unit N-39 IN THE Oakwood Coalbed Methane Gas Field I and authorized a Disbursement VGOB 00-0321-0775-01 Applicants in Accordance with their ownership interests of Escrow Subaccount for VGOB Tract 3. Split agreement actions were approved by the Board and reflected a 25% to 75% split between Reserve Coal Properties and the Metcalf Estate; a 50% to 50% split between Reserved Coal Properties, Ruth Culbertson. And Clyborne Inc.
 - 4.1.3 AT THE TIME OF DISBURSEMENT VGOB 00-0321-0775-01 was approved and executed by the Board, the account for Unit 0775 was to be closed. Subsequent to the disbursement, the account reflected an amount just over \$100 and has over time, accumulated interest for a total account value of 122.68 at June 30, 2009. THIS DISBURSEMENT VGOB 00-0321-0775-02 will close the account, following the disbursement percentages approved by the Board in the -01 disbursement.
- 4.2. To the extent claims to the Gas were in conflict, pursuant to Va. Code S 45.1-361-22 payments attributable to said conflicting claims were ordered deposited by the Unit Operator into the escrow account established by the Pooling Orders (herein "Escrow Account"). According to the Pooling Orders and testimony, the estate ownership interests of Reserve Coal Properties ; and the ownership interests of certain of the Metcalf Estate, Ruth Culbertson and Clyborne, Inc in Tract 3 in the Subject Drilling Unit were in conflict and became subject to the escrow requirements of the Pooling Order.
- 4.3. The Unit Operator's Miscellaneous Petition regarding Tract 3 a copy of which is attached to and made a part hereof, states under oath that Reserve Coal Properties and the Applicants have entered into an agreement with regards to Tract 3, that by the terms of the agreements, Reserve Coal Properties has entered into a split agreement regarding these tracts and escrow regarding these individual conflicting claims detailed herein, is no longer required for these parties.
- 4.4. The Unit Operator gave notice to Reserve Coal Properties and the applicants that the Board would consider its disbursement authorization at its hearing on August 18, 2009 and consider whether to: (1) amend the Pooling Order to provide for the disbursement a portion of funds on deposit in the Escrow Account attributable to a portion of Tract 3 identified in the attached miscellaneous petition (2) delete the requirement that the Unit Operator place future royalties attributable to a portion of said Tract 3 relative to the interests of Applicants identified in the miscellaneous petition in the Escrow Account, and (3) CLOSE the escrow account under this docket number because there are no other parties under this order subject to continued payments in the escrow.
- 4.5. The Unit Operator filed the attached accounting for Subject Drilling Unit's Escrow Account with the Board ("Accounting").

5. **Findings:**

5.1. Va. Code 45.1-361.22.5 provides:

The Board shall order payment of principal and accrued interests, less escrow account fees, from the escrow account to conflicting claimants within thirty days of receipt of notification of (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them or (ii) an agreement among all claimants owning conflicting estates in the tracts in question or any undivided interest therein. The amount to be paid to the conflicting claimants shall be determined based on the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing made part of the pooling order that

established the escrow account, the operator's records of deposits attributable to those tracts for which funds are being requested, and the records of the escrow account for the coalbed methane gas drilling unit. The interests of any cotenants who have not entered into an agreement shall remain in the escrow account.

5.2 Applicant has certified and represented to the Board that:

- (1) Buckhorn Coal Company and certain individuals of the Jacob Fuller heirship property in Tract 1a; Buckhorn Coal Company and certain individuals of the (Columbus) Earl Whited Heirs in Tract 2 and Tract 3, are the owners of the coal and gas acreage estate underlying a portion of VGOB Tract 1a and VGOB Tracts 2 and 3 of the Subject Drilling Unit;

(2) Net interests attributable and to be disbursed to Applicants are shown in Table 1,

VGOB Approved Disbursement

VGOB-00-0321-0775-02

N-39 (Disbursement of Residual Funds after -01 disbursement closing the account). Interest

			Frac	Acreage	Split	Escrowed	% of
			Interest	Interest	Agreement	Acres	Escrowed Funds
				Disbursed		Total	
Table 1							
Tract 3 (CLOSE ACCOUNT AFTER DISBURSEMENT)							
No	Tract	Disbursement Table					
		Totals	2.65			2.6500	
1	3	Metcalf Estate / c/o J. C. Franks / 621 Peavler Street / Marion, VA 24641	1/4	0.6625	75.0%	0.497	18.75%
2	3	Reserve Coal Properties / PO Box 947 / Bluefield, VA 24605		0.6625	25.0%	0.166	6.25%
3	3	Ruth Culbertson / Box 217 / Raven, VA 24639	1/4	0.6625	50.0%	0.331	12.50%
4	3	Reserve Coal Properties / PO Box 947 / Bluefield, VA 24605		0.6625	50.0%	0.331	12.50%
5	3	Clyborne, Inc. / 9325 Olympic View Drive / Edmonds, WA 98020	1/2	1.3250	50.0%	0.663	25.00%
6	3	Reserve Coal Properties / PO Box 947 / Bluefield, VA 24605		1.3250	50.0%	0.663	25.00%

6. Relief Granted:

For the reasons set forth in Paragraph 4 and 5 above, and based upon the Accounting and Table 1 above, the Escrow Agent is ordered to, within 10 days of receipt of this executed order to disburse funds for the unit and applicants detailed in Table 1 above.

Exhibit E to the Pooling Order, showing owners subject to escrow, is deleted and replaced with the Exhibit E attached to this order. Further, the Supplemental Order filed in this cause is hereby modified to delete the requirement that payments attributable to the conflicting coalbed methane gas ownership interests of those applicants indicated in Table 1 be deposited by the Unit Operator into the Escrow Account, **and**, because there are no other owners subject to escrow under the Supplemental Order, the Escrow Agent is directed to close the Escrow Account for Subject Drilling Unit. To the extent not specifically granted herein, any other or further relief is denied.

7. Conclusion:


Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and **IT IS SO ORDERED.**

8. **Appeals:**

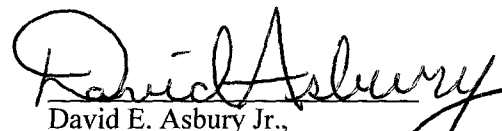
Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo.

9. **Effective Date:** This Order shall be effective on the date of its execution.

DONE AND EXECUTED this 31 day of August, 2009 by a majority of the Virginia Gas and Oil Board.


Bradley C. Lambert, Chairman

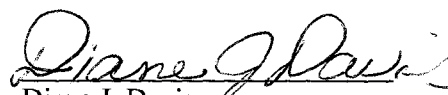
DONE AND PERFORMED this 31st day of August, 2009 by an Order of this Board.


David E. Asbury Jr.,
Principal Executive to the Staff
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)

COUNTY OF WASHINGTON

Russell Acknowledged on this 31st day of August, 2009, personally before me a notary public in and for the Commonwealth of Virginia, appeared **Bradley C. Lambert**, being duly sworn did depose and say that he is the Chairman of the Virginia Gas and Oil Board and **David E. Asbury Jr.**, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Diane J. Davis
Notary Public #174394

My commission expires: 09 / 30 / 2009

INSTRUMENT #090002686
RECORDED IN THE CLERK'S OFFICE OF
BUCHANAN COUNTY ON
SEPTEMBER 10, 2009 AT 01:40PM

BEVERLY S. TILLER, CLERK
RECORDED BY: NME